DEPARTMENT of ENVIRONMENT and NATURAL RESOURCES
PMB 2020
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PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

August 1, 2008

The Honorable Scott Heidepriem, Minority Leader
South Dakota State Senate
503 East 21st Street
Sioux Falls, SD 57105

Dear Senate Minority Leader Heidepriem:

Thank you for your letter encouraging the Department of Environment and Natural Resources (DENR) to require an Environmental Impact Statement (EIS) for the proposed Hyperion Energy Center. As you know, an EIS can be required at either the federal or state level. Actions that trigger a federal EIS may be the expenditure of federal monies or certain federal actions. For example, the U.S. State Department had to issue TransCanada a permit to enter the United States from Canada, and that action triggered a federal EIS for the Keystone Pipeline project. Therefore, a federal EIS may also be required for a pipeline bringing Canadian crude oil to the proposed Hyperion Energy Center.

As you wrote, there is a chapter (i.e. SDCL 34A-9) in state law authorizing a state EIS as well. However, to avoid duplication of effort, SDCL 34A-9-11 does not require a state EIS if a federal EIS is done. Another characteristic is the state EIS law is discretionary in nature and allows agencies to make a determination if an EIS is required. Finally, the law states that actions of an environmentally protective regulatory nature, such as environmental permits, are exempted and do not constitute an action triggering a state EIS.

Because DENR is authorized to function as a central, one-stop environmental permitting agency, there has never been a state EIS completed for DENR pursuant to SDCL 34A-9. However, this lack of Environmental Impact Statements is not to imply there is a lack of environmental information and evaluation such as you are seeking. Instead of an EIS, DENR uses its protective regulatory authorities to examine development projects through a myriad of environmental permitting and regulatory processes. For example, Hyperion will need to comply with the following environmental requirements from DENR:

1. Prevention of Significant Deterioration pre-construction air quality permit;
2. Title V air quality operating permit;
3. Water right permit;
4. Surface water discharge permit;
5. Storm water discharge permit;
6. Hazardous waste disposal requirements;
7. SARA Title III reporting;
8. Underground and above ground storage tank requirements;
9. Drinking water regulations/standards;

10. Operator certification;
11. Engineering plans and specifications review and approval;
12. Ground water discharge permit; and
13. Permit for disposal of wastes.

It has been our experience that these individual regulatory reviews are more detailed and specific than an EIS. Consequently, we believe they provide more useful information for basing environmental decisions. For example, the application submitted by Hyperion for a Prevention of Significant Deterioration pre-construction air quality permit is 613 pages long. That does not even include the modeling analyses used to demonstrate South Dakota's air quality will be protected. Therefore, these permitting applications are detailed, subject to intense technical reviews that include evaluating alternatives such as identifying best available control technologies, and, like an EIS, are prepared at the applicant's expense as you suggest.

Another benefit of these individual regulatory reviews is the public can request administrative hearings regarding the outcomes. Unlike an EIS which cannot be administratively contested, the public has the right to contest environmental permits recommended by DENR. Once contested, DENR boards hold in-depth hearings to construct records that include information from all sides. For example, the Board of Minerals and Environment is currently hearing the draft air quality permits for the Big Stone I and II power plants. These applications and draft permits were public noticed by DENR, and subsequently contested by the Sierra Club and Clean Water Action. As part of those proceedings, the Board held a pre-hearing conference on March 20, 2008, to schedule depositions and the hearing; traveled to Big Stone to tour the existing power plant on July 16, 2008; held a meeting in Milbank on July 17, 2008, to hear public comments regarding the proposed permits; scheduled a week-long contested case hearing during August 18-22, 2008; and have scheduled a second week in September to finish the hearing if necessary. Again, all of this is for just hearing and making decisions regarding the proposed air quality permits. This scenario can be repeated for other permits involving other environmental media.

Because we agree with you that many people are interested in the Hyperion proposal and want to learn more about it, please find the enclosed press release which announced that DENR is making the permitting files available on its webpage at http://www.state.sd.us/denr/denr.html. For those without access to the Internet, DENR is also making a hard copy of these files available to the public at its Geological Survey Program offices located in the Akeley-Lawrence Science Center on the University of South Dakota campus and at our office in Pierre.

You also raised some specific concerns in your letter. For example, you wrote that Hyperion will produce about 19 million tons of carbon dioxide per year, but have no current plans to address these emissions. While we agree the energy center is projected to emit 17.2 million metric tons of carbon dioxide, the good news is the center will employ the latest technology in energy production called Integrated Gasification Combined Cycle, or IGCC, to generate power. The IGCC process not only has lower emissions when compared to other power technologies, but can capture carbon dioxide. Therefore, as the federal government begins working to regulate carbon dioxide emissions, the use of this technology will allow Hyperion to be ready to capture as much as 90 percent of the carbon dioxide from its power plant.

You also expressed concern about what seem like large amounts of air pollutants listed in Hyperion's air permit application. To put these figures in perspective, DENR developed the following table which is found in the "Questions and Answers" section of our Hyperion webpage

referenced above. The table shows the total amount of regulated pollutants coming from the plant will actually be less than the existing emissions occurring in Union County. For example, the carbon monoxide emissions from Hyperion would be only about 23 percent of the amount of carbon monoxide emissions EPA found in Union County during 2002, and only 4.5 percent of the carbon monoxide emissions occurring in Minnehaha County. Levels of most other pollutants will be less as well. In fact, if you total the emissions in the table, the potential emissions from Hyperion plus all the existing emissions in Union County are only 32 percent of the total emissions found in Minnehaha County. Because the air quality in Minnehaha County is good and meets all standards, by comparison the air quality in Union County will continue to be very clean as well, even with the energy center.

Hyperion Emissions versus Existing County Air Emissions found by EPA in 2002 (pollutants are in tons per year)

Pollutant	Hyperion Total	Union County Total	Union County Vehicles	Minnehaha County Total	Minnehaha County Vehicles
Particulate matter 10 microns in diameter or less	1,046	4,521	7	10,930	23
Particulate matter 2.5 microns in diameter or less	1,046 [1]	909	23	2,076	61
Sulfur dioxide	863	1,532	30	3,320	106
Nitrogen oxides	773	2,191	1,169	6,538	3,532
Volatile organic compounds	473	1,007	454	7,171	2,388
Carbon monoxide	1,999	8,853	6,728	44,346	30,027

1 – For the modeling analysis, Hyperion assumed all particulate matter will be 2.5 microns in diameter or less. Therefore, the amount of particulate matter 10 microns in diameter or less will be equivalent to the amount of particulate matter 2.5 microns in diameter or less.

Finally, you wrote about the emissions listed in Hyperion's air permit application and questioned if emissions from flares are included. Potential emissions from flares are not included in these figures, but we agree flares need to be addressed. Therefore, DENR's air quality engineers are working to develop restrictions on the use of flares through the air permitting process. As for the potential wastewater and waste disposal impacts you mentioned, DENR will be addressing those as well when Hyperion applies for discharge and waste disposal permits.

In summary, we agree with you that to make the best and most informed decisions as the project proceeds, both DENR and the public need to know as much as possible about the proposed Hyperion Energy Center. We are confident the environmental permitting processes authorized by state law will provide the most complete, detailed, and best information for making those decisions. In addition, these permitting processes establish a record that public health and the environment will be protected. For all these reasons, I hope you can understand why DENR does not intend to require an EIS for this project. Thank you again for your letter.

Sincerely,

Steven M. Pirner, PE
Secretary

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FOR IMMEDIATE RELEASE: Wednesday, January 23, 2008
FOR MORE INFORMATION: Kim Smith, 773-3152

DENR Provides Internet Access to Hyperion Permit Files

PIERRE – The South Dakota Department of Environment and Natural Resources (DENR) announced today that it is making environmental permitting files related to the proposed Hyperion Energy Center available to the public both electronically and in hard copy.

DENR and the Bureau of Information and Telecommunications have developed a website at http://www.state.sd.us/denr/hyperion.htm, where the department will post permit applications submitted by Hyperion, correspondence files, and provide updates regarding the status of DENR reviews of the applications. The website also features links to Hyperion's website.

The website can be reached by clicking on "Hyperion Energy Center - Environmental Permits" under the "New" heading on DENR's website at http://www.state.sd.us/denr/denr.html.

For those who may not have internet access, DENR is also providing hard copies for local residents of Hyperion permit applications and related information at the department's Geological Survey Program offices, which are located on the third floor of the Akeley-Lawrence Science Center on the University of South Dakota campus in Vermillion. The files can be viewed during normal business hours from 8 a.m. to 5 p.m. Central Time.

Hyperion is a Dallas-based oil company that is considering plans for building a new energy center that consists of an oil refinery and power plant. Hyperion officials have indicated that an area in Union County is one of several potential locations they are considering and have started submitting applications for environmental permits for that site.

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